IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 150 OF 2005

SANGLI BANK LIMITED (Scheduled Bank)
having its head office at Rajawada)
Chowk, Sangli 416416 and having its)
Branch Office at C.T.S. No. 1123-B)
Model Colony Shivaji Nagar, Pune.)
Through Avinash Shrikrishna)
Puntambekar, the General Power of)
Attorney holder.) .. PETITIONER

VERSUS

MADHAV SHANKAR GHATE)
residing at 1123-B Shivaji Nagar)
Pune.) .. RESPONDENT

Mr. S. S. Patwardhan for petitioner

Mr.R. S. Datar for respondent

CORAM:-SMT. RANJANA DESAI &

DATED:-27-1-2005

ORAL JUDGMENT:

Rule. By consent of the parties taken up for hearing forthwith.

1. The petitioner is the original defendant ("the defendant" for convenience). It is a scheduled bank. The defendant is in possession of the suit premises being Apartment No.1 on the ground floor situated at C.T.S. No. 1123-B Shivaji Nagar Pune, admeasuring about 1110 sq. ft. along with the attached toilet and W.C.

2. Civil Suit No. 582 of 2001 came to be filed by the respondent ("the plaintiff" for convenience) in the Small Causes Court at Pune against the defendant. According to the plaintiff he is the owner and landlord of the suit premises. The defendant is in occupation of the suit premises as tenant and he is paying the rent at Rs.4,320/- per month. In addition the defendant also pays Corporation and other taxes as well as the maintenance charges per month. The plaintiff's further case is that the tenancy commences from the

first and expires on the last day as per the calendar month. The defendant is a scheduled bank as defined in clause "C" of Section 2 of the Reserve Bank of India Act, 1934 having paid up share capital of Rs. one crore or more. The tenancy of the defendant is governed by the provisions of the Transfer of Property Act and protection of the Maharashtra Rent Control Act 1999 ("the said Act" for short) is not available to the said tenancy.

3. The plaintiff's case further is that he does not want to continue the tenancy of the defendant and hence through his advocate's notice dated 20/9/2001 he terminated the tenancy of the defendant by the end of 31.10.01 and called upon the defendant to quit and deliver the vacant and peaceful possession of the suit premises. The defendant in its reply denied the plaintiff's case. Hence the suit.

4. Before the trial court the plaintiff examined himself and also adduced supplementary chief examination. He also placed on record certain relied upon documents and closed his evidence. On behalf of the defendant, the defendants' employee Mrs. Walawalkar was examined as D.W. 1. The defendant also brought on record certain documents.

5. After perusing the evidence on record, the trial Court by its judgment

dated 31-3-04 held that the plaintiff had proved that the plaintiff had validly terminated the tenancy as required under the provisions of Section 106 of the Transfer of Property Act and that the defendant had failed to prove that the trial court had no jurisdiction. Thus the trial court decreed the suit. The trial court directed the defendant to vacate and handover vacant and peaceful possession of the suit premises to the plaintiff. Being aggrieved by the said judgment and decree the defendant filed an appeal in the District Court at Pune being Civil Appeal No. 244 of 2004. The lower appellate court by its judgment and decree dated 21-12-2004 concurred with the trial court on all issues and dismissed the defendant's appeal. Being aggrieved by the said judgments and decrees the appellant has filed the present writ petition.

6. I have heard at some length Mr.Patwardhan, the learned counsel for the defendant-petitioner and Mr. Datar, learned counsel appearing for the respondent.

7. There is no dispute about the fact that the defendant is a Scheduled Bank. There is no dispute about the fact that the relationship of landlord and tenant exists between the plaintiff and the defendant.

8. Mr. Patwardhan learned counsel appearing for the petitioner-defendant

assailed the impugned judgments on two counts. Firstly he submitted that pursuant to Section 3 (b) of the said Act the protection which was available to the defendant tenant has now been withdrawn. He then drew my attention to Section 33 of the said Act which speaks about jurisdiction of courts. The said section sofar as it is relevant reads thus:-

"33. Jurisdiction of courts.

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jaurisdiction,-

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Ackt, 1897, such court, and

"33(c). elsewhere, the court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession

of any premises and to decide any application made under this Act (other than the application which are to be decided by the State Government or an officer authorised by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question."

9. The learned counsel laid more stress on Section 33(1)(c) and contended that it is very clear from a bare reading of this provision, that any suit or proceeding between a landlord and a tenant relating to recovery of possession of any premises filed under the said Act can only be decided by the Small Causes Court. So far as the plaintiffs are concerned protection of the said Act having been withdrawn, the suit cannot be a suit for recovery of possession under the said Act. Therefore, the Small Causes Court cannot have jurisdiction to entertain the instant suit. The learned counsel further submitted that this is merely a civil dispute between the lessor and the lessee and, therefore, only ordinary civil court shall have jurisdiction to entertain this suit as per Section 9 of the Code of Civil Procedure.

10. The learned counsel further urged that admittedly there is a written

contract between the plaintiff and the defendant. As per Section 106 of the Transfer of Property Act, the notice of termination will have to be under a written contract and inasmuch as notice of termination is not under the written contract it is invalid. He, therefore, submitted that the impugned judgment and decree deserves to be set aside.

11. Mr. Datar, learned counsel appearing for the respondent, however, drew my attention to Section 26 of The Provincial Small Causes Courts Act, 1887, and contended that said section makes it very clear that the suit between the landlord and tenant must necessarily be filed in the Small Causes Court. In support of his submission, the learned counsel relied on a decision of this Court in Dilip Murlidhar Lohiya v. Mohd. Azizul Haq Mohd. Abdul Haq, A.I.R. 1990 BOMBAY 228.

12. So far as the second point urged by Mr. Datar is concerned, he contended that neither in the suit nor in the appeal this point was urged and, therefore, at this belated stage the appellant cannot urge it.

13. Section 26 of the Provincial Small Causes Courts Act, 1887 sofar as it is relevant reads thus:

"26. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.-(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between in licensor and licensee, or a landlord and tenants, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefore, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1991 or the Maharashtra Housing and Area Development Act, 1976, or any law for the time being in force, apply."

In order to determine which court has jurisdiction to try a suit, the court has to read the plaint as a whole and ascertain the real nature of the suit and what

in substance the plaintiff has asked for. If on the plain reading of the plaint it becomes apparent that the plaintiff has alleged the relationship of landlord and tenant between him and the defendant and sought possession of the tenanted premises the suit will lie in the Small Causes Court as per Section 26 of the Provincial Small Causes Courts Act, 1887. It is only Small Causes Court, Pune, which could have tried the suit and come to a conclusion whether the protection of the said Act is available to the defendant or not. Section 33 of the said Act reiterates the same position. In view of this the objection to maintainability of the suit will have to be rejected.

14. So far as the second submission of Mr. Patwardhan as regards notice is concerned, Mr. Datar has rightly contended that it was not urged either in the trial court or in the lower appellate court and hence at this belated stage the defendant cannot be allowed to agitate it.

15. In view of this there is no substance in the petition. The petition is rejected. At this stage Mr. Patwardhan learned counsel appearing for the appellant states that six months' time may be granted to the appellant/defendant to vacate the suit premises. Mr. Datar, learned counsel for the respondent objects. In the circumstances of the case four months' time is granted to the appellant to vacate the suit premises. The appellant

shall file undertaking in this court stating therein that after expiry of four months' the appellant shall handover vacant, unencumbered and peaceful possession of the suit premises to the respondent. Undertaking to be filed within one month.

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